clerical assistance. It would appear that no overseer is at present employed by the trustees but the rents are being collected by a rent collector and clerical assistance is rendered by some of the members of the staff of Messrs. Turquand Youngs & Co. Counsel for the trustees has submitted that in view of the changed circumstances of the testator's property and the alteration in salary scales since 1918 the allowance is inadequate and should be increased. In arriving at my decision on this point I must take cognizance of the fact that in 1918 the learned judge thought fit to sanction the payment of an allowance in addition to the commission of five per centum. In the circumstances of this case, I think there is force in the submission made by counsel for the trustees that the sum of $150 per mensem is now inadequate. In my opinion the allowance should be increased to the sum of $450 per mensem and there will be an order accordingly.

It remains to consider whether the director's fees which are to be refunded by Mr. Phillips are to be treated as capital or income of the testator's estate. It is clear that unless the fees can be shown to be income they must be treated as capital. In *Re Francis*[5] certain trustees of a testator's estate held a number of shares in a company. These shares formed part of the testator's estate. The trustees were appointed directors of the company and received remuneration for their services as directors. It was held that they were accountable for the remuneration to the testator's estate, there being no provision in the testator's will which enabled them to make a profit for themselves. The learned judge then dealt with the question whether the amount of the remuneration was to be treated as capital or income. The facts of the present case are different in that the testator's estate does not hold any shares in Raffles Hotel, Ltd. Nevertheless, the following observations of the learned judge at p. 78 of the report are, in my view, applicable to the present case:—

> "But how can you say that these moneys which are paid to the trustees are in any sense rents and profits? They are a payment made to the trustees for their services. It has nothing to do with the income of the estate."

In my opinion, adopting the words of the learned judge, the director's fees in the present case have nothing to do with the income of the testator's estate. It follows therefore that they must be treated as capital.

The costs of all parties will be taxed as between solicitor and client and paid out of the estate.

*Order accordingly.*

Solicitors: *Donaldson & Burkinshaw; Allen & Gledhill.*

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## *Re* CHUA GEOK HWA

**[O.C.J. (Ambrose J.) April 20, 1960]**

**[Singapore — Originating Summons No. 145 of 1959]**

***District Court — Order for possession of land against trespasser — Building exceeding $1,000 in value erected without consent of owner of land — Order for removal of building — Excess of jurisdiction — Courts Ordinance (Cap. 3), ss.67(g) and 58 Application for Certiorari and Prohibition.***

The District Court has no jurisdiction under section 68 of the Courts Ordinance to make an order against a trespasser for possession of land if there is on it a building exceeding $1,000 in value which has been erected by the trespasser without the consent of the owner of the land. An order for the removal of the building is a mandatory injunction, an action for which is excluded from the jurisdiction of the District Court by section 67(g) of the Courts Ordinance.

In this case on an application for *Certiorari* and Prohibition the High Court ordered that the judgment of the District Court be removed into the High Court and quashed and that the plaintiff and the bailiff of the District Court be prohibited from executing the judgment.

APPLICATION FOR *CERTIORARI* AND PROHIBITION.

*Tan Boon Teik* (Director of Legal Aid) for the applicant.

*C. F. J. Ess* for the respondent.

**Ambrose J.:** This is an application for an order of *certiorari* to remove into the High Court and quash a judgment of the Civil District Court and for an order of prohibition prohibiting the plaintiff and the bailiff from executing the judgment.

The judgment is in these terms:

> "It is ordered and adjudged that the plaintiff is entitled to recover against the defendant possession of all that the portion of the land at Kampong Eunos, Singapore, being part of Lots 137-38 to 137-80 of Mukim XXIII upon which the defendant has wrongfully and without the plaintiff's consent or authority erected a plank and zinc roof building which is numbered 38.
>
> It is further ordered that the defendant do remove the said building from the abovementioned portion of the said land and do give the plaintiff vacant possession of the said portion of the said land on or before the 30th day of September, 1959."

The second order, which is for the removal of a building from the land, is a mandatory injunction, an action for which is excluded from the jurisdiction of the District Court by section 67(g) of the Courts Ordinance. In making the order the District Court clearly exceeded its jurisdiction.

In my opinion, the District Court also exceeded its jurisdiction in making the first order for possession of the land. There is a building on the land, the value of which, it is not disputed, exceeds $1,000. It is impossible to make an order for possession relating to the land on which the building stands without affecting the possession and ownership of the building. If the first order is allowed to remain, the defendant would be excluded not only from the land but also from the building. Having regard to the value of the building, I think the value of the subject matter of the action exceeds $1,000 and, therefore, the District Court had no jurisdiction to make the first order.

For the above reasons, I order that the judgment of the District Court be removed into this Court and quashed and that the plaintiff and the bailiff of the District Court be prohibited from executing the judgment.

*Order accordingly.*

Solicitors: *Director of Legal Aid; R. C. H. Lim & Co.*